



W.A.No.794 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.794 of 2022

Ganesan

.. Appellant

Vs.

1. Rajendran

2. The Commissioner

Hindu Religious and Charitable Endowments Department

Nungambakkam

Chennai 600 034.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 19.01.2022 made in W.P.No.11535 of 2021.

For the Appellant : Mr.Ajmal Khan, Senior Counsel
For M/s. Ajmal Associates

For the Respondents : Mr.V.Raghavachari
Senior Counsel
For Ms.V.S.Usharani for R1

Mr.N.R.R.Arun Natarajan
Special Government Pleader
(HR & CE) for R2



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JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.Ajmal Khan, learned Senior Counsel for the appellant, Mr.V.Raghavachari, learned Senior Counsel for Ms.V.S.Usharani, learned counsel for the first respondent and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) for the second respondent.

2. The present first respondent filed a writ petition bearing No.11535 of 2021 seeking directions against the Commissioner of Hindu Religious and Charitable Endowments Department to dispose of the unnumbered suo motu proceedings of the review petition filed on 30.10.2019 by the original writ petitioner (first respondent) in a time bound manner. The learned Single Judge, under the impugned order, directed the Commissioner, HR&CE Department to take up the suo motu proceedings filed by the original writ petitioner against the order passed by the Joint Commissioner, HR&CE Department



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dated 31.12.2010 in O.A.No.7 of 2008 and accordingly, number the suo motu review proceedings under Section 69(2) of the Hindu Religious and Charitable Endowments Act, 1959.

3. The present appellant was not made a party in the writ petition. After seeking leave to appeal, the appellant has filed the present appeal. According to the present appellant, he is the affected person and the order passed by the Joint Commissioner, HR&CE Department dated 31.12.2010 in O.A.No.7 of 2008 was in his favour.

4. Shorn of unnecessary details, the facts relevant are quoted as under:

The temple called Thazhuthadi Amman Temple at Thiruvudaiyarpatti Village exists. The writ petitioner claims to belong to the said Village and is a devotee of the temple. One Ganesan, son of Chinnaiya (present appellant), in order to get an honour, ie. Ambalam in respect of the said temple, filed O.A. under Section



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63(e) of the Act of 1959. The same was numbered as O.A.No.7 of 2008. The Joint Commissioner, HR & Chief Engineer Department, under order dated 31.12.2010, allowed the said O.A.

5. It appears that some third party filed an appeal before the Commissioner, HR&CE Department with an application for condonation of delay of 266 days. The Commissioner, HR&CE Department allowed the application condoning the delay. As against the said order condoning the delay, the writ petition was filed by the present appellant. The same was dismissed. Aggrieved thereby, the present appellant filed SLP before the Apex Court. The Apex Court allowed the SLP.

6. The Apex Court, while allowing the SLP, observed that the dismissal of the appeal filed by the third respondent therein shall not preclude the Commissioner in exercising his suo motu power under Section 69(2) of the Act. The Apex Court further observed that it is not expressing any opinion with regard to the exercise of



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power suo motu by the Commissioner under Section 69(2) of the Act and it is for the Commissioner to invoke the powers under Section 69(2) of the Act if he is so satisfied. Subsequent thereto, the appeal was dismissed by the Commissioner. The instant writ petition was filed by the present first respondent.

7. Learned counsel for the appellant submits that the Commissioner did not exercise his suo motu powers under Section 69(2) of the Act, 1959. In the light of that, it was not open for the learned Single Judge to direct the Commissioner to exercise his suo motu powers under Section 69(2) of the Act. After the limitation period for filing of an appeal is exhausted, the party does not have an opportunity of filing an application under Section 69(2) of the Act. The powers under Section 69(2) of the Act are the suo motu revisional powers of the Commissioner. The said powers cannot be sought to be exercised by the party.

8. Mr.Raghavachari, learned Senior Counsel for the original writ petitioner submits that a party has a right to bring it to the notice of



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the revisional authority the illegalities committed. The same is done by the writ petitioner. According to learned Senior Counsel, the party possessing the knowledge of the illegality can bring it to the notice of the Commissioner and the Commissioner can take cognizance of such an information.

9. Learned Senior Counsel relies upon the judgment of the Apex Court in the case of **Samir Agrawal v. Competition Commission of India [(2021) 3 SCC 136]**, the judgment of the learned Single Judge of this Court in the case of **E.Srinivasaraghavan v. Commissioner, HR&CE [(2008) 5 MLJ 487]**, the judgment of learned Single Judge in the case of **S.A.Ponnuswamy v. The Deputy Commissioner [(1994) 1 MLJ 155]** and the order of the Division Bench of this Court in **D.Jevanathan v. The Joint Commissioner [W.A.No.53 of 2024 dated 09.01.2024]**.

10. Learned Special Government Pleader, HR&CE, submits that any person can bring to the notice of the Commissioner of the illegal order passed by the Joint Commissioner or Deputy Commissioner and



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the action can be taken by the Commissioner on the basis of such information. He relies upon the judgment of the Apex Court in the case of ***R.Rathinam v. State [(2000) 2 SCC 391]***.

11. We have considered the submissions canvassed by learned counsel for the parties.

12. Section 69 of the Act reads thus:

69. Appeal to the Commissioner:- (1) Any person aggrieved by any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, under any of the foregoing sections of this Chapter may, within sixty days from the date of the publication of the order of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by the Joint Commissioner or Deputy Commissioner, as the case may be, in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner



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suo motu and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section, or in which no suit has been instituted in the Court within the time specified in sub-section (1) of Section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in Section 66."

13. The powers of the Commissioner under Sub-section (2) of Section 69 are suo motu revisional powers. The Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or



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propriety of the order passed by the Joint Commissioner or Deputy Commissioner as the case may be.

14. The revisional powers of the Commissioner are independent of the powers exercised by a party in preferring an appeal or otherwise. Of course, if an order in appeal has been passed on merits, then, the Commissioner may not have suo motu revisional powers. However, in respect of which no appeal has been preferred, then, the Commissioner may invoke his powers under Section 69(2) of the Act.

15. In the present case, some person had preferred an appeal against the order of the Joint Commissioner. However, the same was dismissed under the orders of the Apex Court on the ground of limitation. In view of that, it can be said that appellate powers are not exercised and no orders are passed in appeal, thereby the Commissioner can exercise his suo motu revisional powers under Section 69(2) of the Act.



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16. The suo motu revisional powers are bestowed on the Commissioner to correct a decision, which, according to him was erroneous. The revisional powers are exercised by the Commissioner and the same would be supervisory in nature.

17. It is trite that when a statute requires a particular thing to be done in a particular manner, it has to be done in that manner only and not otherwise. The parties cannot circumvent the provision and file a revision. However, at the same time, even if the appeal is dismissed on the ground of limitation, the Commissioner HR&CE Department is vested with the revisional powers under Section 69(2) of the Act and the said powers can be exercised by him.

18. Naturally, the said powers can be exercised if the Commissioner has the knowledge of illegality or the impropriety in passing the order by the Joint Commissioner or Deputy Commissioner. He can get the knowledge on an application by any person or if he comes across the order on his own accord. A person in knowledge of the order passed by the Joint Commissioner or Deputy



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Commissioner, which lacks propriety or is illegal, can bring to the notice of the Commissioner and the Commissioner can exercise his suo motu revisional powers.

19. To say that the Commissioner cannot exercise his powers if some information is given to him by third party would be too narrow an interpretation of Section 69(2). The Commissioner, certainly, upon an information received, can also exercise his suo motu powers. It would certainly be the right and authority of the Commissioner to delve into the same.

20. In the light of the above, we observe that the application given by the writ petitioner (first respondent) shall be considered as an information received by the Commissioner, HR&CE Department and he may, upon going through the order passed by the Joint Commissioner or Deputy Commissioner, consider whether to invoke suo motu powers or otherwise and if he decides to invoke the suo motu powers, then, by following the principles of natural justice, would decide the matter. The order passed by the learned Single



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WEB COPY Judge is modified accordingly.

21. The writ appeal is disposed of. There shall be no order as to costs. Consequently, C.M.P.No.5454 of 2022 is closed.

(S.V.G., CJ.)

(D.B.C., J.)
18.01.2024

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam
Chennai 600 034.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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